THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.35894 of 1997

Date: 06-02-2007.

Between :

Smt.T.Pushpa

.....Petitioner

And

Deputy Transport Commissioner & Secretary, Regional Transport Authority, Krishna at Vjijayawada.

.....Respondent.

THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.35894 of 1997

ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

Heard learned counsel for the parties.

On 09.12.1997, a notice was issued to the petitioner. She was asked to pay the difference of tax mentioned in the notice. Even in this notice it is not shown as to under what provision of law the tax was levied. It was mentioned that tax was levied as per the interim orders of the High Court. We have not found any order of the High Court asking the respondent to levy the tax. In any case, High Court cannot empower anybody to levy any tax. This tax was levied as per the non-existent orders of High Court at Rs.37,920/-. Tax already paid was deducted, which was Rs.23,280/- and difference of tax which was payable was Rs.14,640/-.

The facts are not at dispute that the vehicle in question was checked when it was not carrying

any passengers at a place which was not within the permitted route of the bus. The bus carried a stage carriage permit. Thereafter, the notice impugned came to be issued.

The learned counsel for petitioner submits that the controversy raised in this petition is covered by a Full Bench judgment of this Court in **Kanapala Rama Rao v. Regional Transport Officer, Srikakulam**[1] and a judgment of Larger Bench of this Court in **L.Royal Reddy v. Government of A.P.**[2].

The learned counsel for respondent, however, submits that the case is not covered either by the Full Bench judgment or by the Larger Bench judgment, as the controversy in this petition was not considered by those judgments. He submits that admittedly the petitioner had a permit to ply the vehicle within a particular route, say route 'A', but she was found plying it on route 'B', for which she had no permit. Therefore, she was charged the tax for route 'B' and whatever tax she had paid while getting the permit for route 'A' was given credit to, therefore, only the difference of tax is collected for the route on which the bus was plying and this was not strictly violation of the conditions

of permit, but as a matter of fact, the petitioner was plying the vehicle on a particular route without any permit, therefore, the tax was levied which was exigible for that route.

We are afraid this contention cannot be considered because, exactly the same contention was considered by the Full Bench of this Court in similar fact situation in the Full Bench judgment in **Kanapala Rama Rao'**s case (supra 1) and the contentions raised were repelled by the Court in para 11 of the judgment, which is reproduced hereunder—

> *"Tax can be levied in respect of a motor vehicle which has a permit and which doesn't have a permit. It is not in dispute that the vehicle of the petitioner was having a town service stage carriage permit. Only because a deviation has been made in the route for a day for one reason or the other would not make the vehicle as having plied without any permit whatsoever. If there has been violation of conditions of permit granted to a transporter in terms of the provisions of the Motor Vehicles Act, 1988, the same would attract the penal provisions. By reason thereof, in our considered opinion, no extra tax can be levied."*

Even the Full Bench was of the view that even

if a vehicle was found on a route it was not permitted, it would be violation of permit and the law can take its own course in dealing with such persons, but it cannot levy any additional, compensatory, extra or penal tax.

On similar lines, a judgment of Supreme Court has been shown to us in **Hardev Motor Transport v. State of M.P.** [3]. In paragraph 32 of this judgment, the Supreme Court held—

> *"We have noticed that the Constitution Bench categorically states that compensatory tax cannot be progressive. We have furthermore noticed that, according to the Constitution Bench, imposition of tax cannot be a term or condition of a licence. If a permit has been granted, the holder of a permit is liable to comply with the conditions of permit. If he violates the terms and conditions of permit, law will take its own course. A permit is granted under the 1988 Act. If there is violation of the terms of permit, the consequences therefore, shall ensue as contained in Section 192-A of the 1988 Act. A distinction must be borne in mind that a tax cannot be imposed by way of penalty although penalty can be imposed for non-payment of tax or evasion of tax. The State may make suitable legislations in this behalf. But the same would not*

mean that while specifying a rate of tax, the executive Government of the State can indirectly levy a penalty which it cannot do directly."

For these reasons, we allow the writ petition and set aside the impugned notice. The amount already deposited by the petitioner shall be refunded. However, the respondents are permitted to take recourse to law, if not already taken, if they feel that the conditions of permit have been violated by the petitioner.

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BILAL NAZKI, J

6th February 2007.

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NOOTY
RAMAMOHANA RAO, J

ajr

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[1] 2001 (6) ALD 402 (DB)
[2] 2004 (2) ALD 225 (LB)
[3] (2006) 8 SCC 613